



Title IX New Regulations Overview

Mackenzie Wilfong
Brandee Hancock

November 2020

Where are we now?

- The Final Rule is incredibly long and complicated. Released just 100 days before the effective date, the Final Rule is 2,033 pages and 636,609 words.
 - DOE took three years to draft the new rules and provided 100 days to implement
 - Published in the Federal Register on May 19, 2020.
- Effective date August 14, 2020.
 - There is no grace period. OCR started enforcement on August 14th
- Nationwide injunctions are no longer a feasible route to slow implementation of the regulations.

How we prepared

- Brandee and Mackenzie developed and presented a four-part webinar series for the state in July to aid with understanding the 2,000 page regulations and with drafting new policies and processes.
 - All conference materials and templates were provided in Word for ease of use at each institution, all resources were made available open-source.
 - The webinars are archived at <https://www.tulsacc.edu/title-ix-regulations-conference>.
 - We had participants from every institution in the state and an average attendance of 80 per session.
- We are collaborating with more than 20 institutions across the state to put out a state-wide request for proposal for decision makers, advisors, and informal resolution facilitators and to share resources for their training.
- By now each of your institutions should have a significantly revised Title IX policy on your website.

Major Process Changes

- Revised and uniform definition of sexual harassment across all institutions.
- Formal complaints **must** be dismissed (from the Title IX process) if conduct:
 - Would not constitute sexual harassment even if proved,
 - Did not occur in institution's program/activity, or
 - Did not occur against a person in the United States (study abroad).
- Formal complaints **may** be dismissed (from the Title IX process):
 - If complainant requests to withdraw their complaint
 - If respondent is no longer enrolled or employed
 - When specific circumstances prevent gathering evidence sufficient to reach a determination
- If you have a formal complaint you can offer an informal process (mediation) unless it is a faculty on student issue, then the informal process is not allowed.
- Interim suspensions are now emergency removals and require a modified risk analysis and appeal, which is a good use for a Behavioral Intervention Team.

Major Process Changes

- All investigations end with a written report.
- Investigative report evidence review and Pre-hearing evidence review is now a structured and formalized process.
- For all decisions (faculty, staff, and students) the institution must have a live hearing with cross-examination by an advisor, which can be done virtually.
 - The College or university must provide an advisor “without fee or charge” to any party without an advisor in order to conduct cross-examination (can limit to only CX)
 - The decision maker must rule on relevance of questions on the record
 - Parties and witnesses must attend hearing and submit to live, advisor-led cross-examination, otherwise all statements submitted by absent party must be excluded.
- All training materials used for anyone in the Title IX process must be made public on a website

Employment challenges

- This new process applies to employees as well as students.
 - This is a huge issue because the law does not read the same.
 - Title VII and Title IX are not the same thing.
- Title VII defines sexual harassment as “severe or pervasive” not the Title IX “severe and pervasive.”
- Title VII “knew or should have known” versus Title IX “actual knowledge”
- Title IX you now “must dismiss” a formal complaint if conduct is not against a person in the United States, nevertheless Title VII applies to United States citizens working abroad.
- “The recipient must keep confidential the identity of...any individual who has been reported to be the perpetrator of sex discrimination, any respondent...except as may be permitted by...FERPA...or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.” §106.71(a)
 - NSF requires notifications in grant terms and conditions.

General closing observations

- This process was already long, involved, and complex, it is now much more so.
- Each institution reviewed both Title IX and Student Conduct processes and extensively revised both this summer.
 - Even without a pandemic this would have been exceptionally challenging.
- These revisions required significant engagement with HR due to the process being extended to faculty and staff as well as students.
 - This often required modifications to Faculty Handbooks, which again was very challenging over the summer.
- Institutional Title IX Coordinators must continue to be exceptionally adept.
- The outcome of the election will have a direct impact on these regulations.
 - <https://www.educationdive.com/news/biden-said-he-wants-to-undo-devos-title-ix-rule-how-would-he-replace-it/587853/>
- These are tight budgetary times, but not the time to cut Title IX resource support.

Thank you!

